

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

-----X
In re Application of: :
 : Examiner: Helal A Algahaim
Armin Koehler et al. :
 :
For: METHOD FOR ACTIVATING :
PERSONAL PROTECTION MEANS :
 :
Filed: May 8, 2007 : Art Unit: 3663
 :
Serial No.: 10/583,055 :
-----X

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I hereby certify that this correspondence is being electronically transmitted to the United States Patent and Trademark Office via the Office electronic filing system on <u>November 24, 2009</u> . Signature: / <u>Marcello M. Petrone</u> /

APPEAL BRIEF PURSUANT TO 37 C.F.R. § 41.37

SIR:

In the above-identified patent application ("the present application"), Appellants filed a Notice Of Appeal on September 24, 2009 from the Final Office Action issued by the U.S. Patent and Trademark Office on May 26, 2009, so that the two-month appeal brief due date is November 24, 2009.

In the Final Office Action, claims 11 to 30 were finally rejected. A Response After A Final Office Action was mailed on August 24, 2009, and an Advisory Action was mailed on September 10, 2009.

It is understood for purposes of the appeal that any Amendments to date have already been entered by the Examiner, and that the Response After Final does not require entry since it included no amendments.

As to the length of the “concise explanation” of the subject matter defined in each of the claims involved in the appeal (see 41.37), the “concise explanation” language is like the “concise explanation” requirement of former Rule 37 C.F.R. § 1.192. Accordingly, the length of the concise explanation provided is acceptable, since it would have been acceptable under 37 C.F.R. § 1.192 and since it specifically defines the subject matter of the independent claims involved and in the appeal. In the filing of many appeal briefs under the old rule for the present Assignee, the length of the “concise explanation” has always been ultimately accepted by the Patent Office.

It is therefore respectfully submitted that this Appeal Brief complies with 37 C.F.R. § 41.37. Although no longer required by the rules, this Brief is submitted in triplicate as a courtesy to the Appeals Board.

It is respectfully submitted that the final rejections of claims 11 to 30 should be reversed for the reasons explained below.

1. REAL PARTY IN INTEREST

The real party in interest in the present appeal is Robert Bosch GmbH (“Robert Bosch”) of Stuttgart in the Federal Republic of Germany. Robert Bosch is the assignee of the entire right, title and interest in the present application.

2. RELATED APPEALS AND INTERFERENCES

There are no interferences or other appeals related to the present application, which “will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal”.

3. STATUS OF CLAIMS

CLAIMS 1 TO 10 ARE CANCELED.

A. Claims 11, 13, 15, and 20 were rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,236,922 (“Andres”), in view of U.S. Patent No. 5,014,810 (“Mattes”).

B. Claim 12 was rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,236,922 (“Andres”) in view of U.S. Patent No. 5,014,810 (“Mattes”), in further view of U.S. Patent No. 6,459,366 (“Foo”), and in further view of U.S. Patent Application No. 2003/0197356 (“Fisher”).

C. Claim 14 was rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,236,922 (“Andres”) in view of U.S. Patent No. 5,014,810 (“Mattes”), and in further view of U.S. Patent No. 6,549,836 (“Yeh”).

D. Claims 16 to 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,236,922 (“Andres”) in view of U.S. Patent No. 5,014,810 (“Mattes”), in further view of U.S. Patent No. 6,459,366 (“Foo”), and in further view of U.S. Patent Application No. 2003/0197356 (“Fisher”).

E. Claims 21 to 30 were “rejected using the same prior arts and same rationales as claims 12-20.” (See p.6 of Final Office Action).

Appellants therefore appeal from the final rejections of pending claims 11 to 30. A copy of all of the pending and appealed claims 11 to 30 is attached hereto in the Claims Appendix.

4. STATUS OF AMENDMENTS

In response to the Final Office Action mailed on May 26, 2009, Appellants filed a Response After A Final Office Action (with no amendments), which was mailed on August 24, 2009.

It is understood for purposes of the appeal that any Amendments to date have already been entered by the Examiner, and that the Response After Final does not require entry since it included no amendments.

5. SUMMARY OF CLAIMED SUBJECT MATTER

The concise explanation of the summary of the claimed subject matter is as follows, as described in the context of the present application.

As to claim 11, it is to a method for activating at least one personal protection device as a function of at least one signal derived from at least one acceleration sensor, the method including using a forward displacement as the at least one signal.

Figure 2 shows the method according to the present invention in a flow chart. In method step 200, acceleration A is measured using sensor system B. The acceleration is usually low-pass filtered in method step 201 to perform single and dual integration in method step 202. In method step 203, characteristic values such as crash type or crash severity may be determined from the acceleration or deceleration, velocity decrease, and forward displacement. These are then ready, in method step 204, to influence the threshold value surface if necessary. (See Specification, pg. 5, lines 19 to 24 and Fig. 2). Forward displacement values are entered in a memory, for example, in look-up tables for certain acceleration and velocity decrease values. Unique points in space are determined via these pairs of acceleration (deceleration), velocity decrease, and forward displacement values. These points together form a surface, namely the threshold value surface. This threshold value surface is then compared with the instantaneous forward displacements to determine whether a deployment case is present. (See Specification, pg. 5, lines 11 to 17).

As to claim 11, it also includes the feature of comparing the at least one signal to at least one threshold value surface, which is set as a function of a velocity decrease and a deceleration. Instantaneous forward displacement S, which occurs and may be determined

(in method step 205) using expansion into a Taylor series, according to the following formula:

$$S(t_0 + \Delta t) = \underbrace{S(t_0)}_{\iint a(t) dt dt} + v(t_0) + \frac{1}{2} a(t_0) \cdot \Delta t^2$$

$$a(t) = \frac{d}{dt} v(t) = \frac{d^2}{dt^2} s(t)$$

is compared with the threshold value surface in method step 206. In method step 207, it is determined whether the threshold value surface is broken through and when. (See Specification, pg. 5, line 26 to pg. 6, line 5 and Fig. 2).

As to claim 11, it also includes the feature activating the personal protection device as a function of the comparison. If the threshold value surface is broken through at a certain point in time, at this time personal protection means RHS are activated in method step 208. If no contact occurs between the forward displacement and the threshold value surface, the method is terminated in method step 209. (See Specification, pg. 6, lines 5 to 8 and Fig. 2).

As to claims 12 and 21, which depend from claim 11, they further include the feature of comparing the forward displacement to a first threshold value which is set as a function of the velocity decrease. Figure 5 shows the simulation of the threshold value surface by two threshold values in a signal flow diagram. In block 501, the velocity decrease is used for forming the threshold value for the forward displacement. (See Specification, pg. 7, lines 9 to 11 and Fig. 5).

As to claims 12 and 21, they also include the feature of comparing the forward displacement to a second threshold value which is set as a function of the deceleration. Figure 5 shows the simulation of the threshold value surface by two threshold values in a signal flow diagram. In block 502, the deceleration is used for forming the threshold value for the forward displacement. (See Specification, pg. 7, lines 9 to 12 and Fig. 5).

As to claims 12 and 21, they also include the feature of simulating the threshold value surface as a function of the comparisons. Figure 5 shows the simulation of the threshold value surface by two threshold values in a signal flow diagram. Only if both blocks 501 and 502 show deployment is a deployment decision relayed via AND gate 514 (an OR gate is also conceivable here. The three-dimensional surface is thus approximated by a maximum or

a minimum of the two surfaces formed from the characteristic lines. OR → Minimum, AND → maximum) to OR gate 520, so that a deployment decision 521 may be made. Block 515 is also provided here for the cases where the threshold value surface results in no deployment. (See Specification, pg. 7, lines 9 to 18 and Fig. 5).

In summary, the presently claimed subject matter is a method for activating at least one personal protection device as a function of at least one signal derived from at least one acceleration sensor, the method including using a forward displacement as the at least one signal; comparing the at least one signal to at least one threshold value surface, which is set as a function of a velocity decrease and a deceleration; and activating the personal protection device as a function of the comparison. (See claim 11).

In further summary, the presently claimed subject matter also includes the feature of comparing the forward displacement to a first threshold value which is set as a function of the velocity decrease; comparing the forward displacement to a second threshold value which is set as a function of the deceleration; and simulating the threshold value surface as a function of the comparisons. (See claim 12). Also, claim 12 depends from claim 11 and therefore includes all the features of claim 11 as described above. (See claim 11).

In further summary, the presently claimed subject matter also includes the feature of comparing the forward displacement to a first threshold value which is set as a function of the velocity decrease; comparing the forward displacement to a second threshold value which is set as a function of the deceleration; and simulating the threshold value surface as a function of the comparisons. (See claim 21). Also, claim 21 depends from claim 11 and therefore includes all the features of claim 11 as described above. (See claim 11).

Finally, the appealed claims include no means-plus-function language and no step-plus-function claims, so that 37 C.F.R. 41.37(v) is satisfied as to its specific requirements for such claims, since none are present here. Also, the present application does not contain any step-plus-function claims because the method claims in the present application are not “step plus function” claims because they do not recite “a step for”, as required by the Federal Circuit and as stated in Section 2181 of the MPEP.

6. GROUND S OF REJECTION TO BE REVIEWED ON APPEAL

A. Whether claims 11, 13, 15, and 20 under 35 U.S.C. § 103(a) are unpatentable over U.S. Patent No. 6,236,922 (“Andres”), in view of U.S. Patent No. 5,014,810 (“Mattes”).

B. Whether claim 12 under 35 U.S.C. § 103(a) is unpatentable over U.S. Patent No. 6,236,922 (“Andres”) in view of U.S. Patent No. 5,014,810 (“Mattes”), in further view of U.S. Patent No. 6,459,366 (“Foo”), and in further view of U.S. Patent Application No. 2003/0197356 (“Fisher”).

C. Whether claim 14 under 35 U.S.C. § 103(a) is unpatentable over U.S. Patent No. 6,236,922 (“Andres”) in view of U.S. Patent No. 5,014,810 (“Mattes”), and in further view of U.S. Patent No. 6,549,836 (“Yeh”).

D. Whether claims 16 to 19 under 35 U.S.C. § 103(a) are unpatentable over U.S. Patent No. 6,236,922 (“Andres”) in view of U.S. Patent No. 5,014,810 (“Mattes”), in further view of U.S. Patent No. 6,459,366 (“Foo”), and in further view of U.S. Patent Application No. 2003/0197356 (“Fisher”).

E. Whether claims 21 to 30 are unpatentable and “rejected using the same prior arts and same rationales as claims 12-20”. (See p.6 of Final Office Action).

7. ARGUMENT

A. THE OBVIOUSNESS REJECTIONS OF CLAIMS 11, 13, 15, AND 20

Claims 11, 13, 15, and 20 were rejected under 35 U.S.C. § 103(a) as unpatentable over Andres, U.S. Patent No. 6,236,922 in view of Mattes et al., U.S. Patent No. 5,014,810.

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claims 11, 13, 15 & 20

Claim 11 includes the features of “using a forward displacement as the at least one signal” and “comparing the at least one signal to at least one threshold value surface, which is set as a function of a velocity decrease and a deceleration.” In this regard, the Office cites “Andres” at col. 3, lines 4 to 22, but this section merely states that:

[The] calculation of the first velocity begins when the **acceleration** signal **exceeds a threshold deceleration level**. This threshold deceleration level may be adjusted for various vehicle models as desired. The calculation of the second velocity begins, and the calculation of the first velocity *is concluded*, when two conditions are satisfied. The first condition is that the first **velocity** has reached a **threshold level**. The second condition is either that a significant **deceleration peak** has been reached in the filtered **acceleration** signal, or that an approximation has been made that the **displacement** of the occupant has reached a certain **displacement threshold**.

(“Andres” reference, col. 3, lines 4 to 22) (emphasis added).

Claim 11 clearly provides for a “**comparing**” between “a forward displacement” and a value “set as a function of a velocity decrease and a deceleration.” This feature is clearly not disclosed or suggested by the “Andres” reference. The Office Actions to date (including the Advisory Action of September 10, 2009) have conclusorily asserted that:

Claim 1 recites the following terms “a forward displacement, velocity and deceleration”. The claim fails to specify if the forward displacement correspond to a passenger displacement, vehicle displacement or any other object

displacement. Also, the claim fails to specify the if the terms velocity and deceleration correspond to the vehicle itself or any other object. In addition, Andres deploys airbag by detecting the velocity, deceleration and occupant displacement.

However, this assertion, even if true, would not render claim 11 upatentable because it does not even assert that the prior art reference(s) teach or suggest all of the features of claim 11. More specifically, the “Andres” reference does not disclose the claim feature of “comparing the [forward displacement] to at least one threshold value surface, which is set as a function of a velocity decrease and a deceleration”, as provided for in the context of the presently claimed subject matter. The Office has simply not provided a **comparison** in the “Andres” reference that discloses *each and every one of these features*.

The cited text of the “Andres” reference refers to 2 separate comparisons. In the first comparison, an acceleration is measured against a threshold deceleration level. This comparison clearly does not disclose the above-discussed features of claim 11. First, velocity is not used at all in this comparison, since the comparison starts “a calculation of the first velocity.” Additionally, there is no displacement in any direction of any object used in this comparison. Thus, it could not possibly disclose the feature of “comparing the [forward displacement] to at least one threshold value surface, which is set as a function of a velocity decrease and a deceleration,” as provided for in the context of the presently claimed subject matter.

The second comparison ends one velocity calculation and begins a second one “when two conditions are satisfied”, which is stated to be as follows:

The first condition is that the first velocity has reached a threshold level. The second condition is either that a significant deceleration peak has been reached in the filtered acceleration signal, or that an approximation has been made that the displacement of the occupant has reached a certain displacement threshold.

It is plain that this also does not disclose all of the features of claim 11, namely the feature of “comparing the [forward displacement] to at least one threshold value surface, which is set as a function of a velocity decrease and a deceleration.” For example, the “Andres” reference does not disclose a “threshold value surface, *which is set as a function of a velocity decrease and a deceleration*”, as provided for in the context of the presently claimed subject matter. Instead, the displacement of the occupant is compared to a certain

displacement threshold. However, the “Andres” reference does not disclose any “displacement threshold” that is “set as a function of a velocity decrease and a deceleration.”

In short, even if the “Andres” reference may refer to several measurements, none of the measurements disclose or even suggest the feature of comparing a displacement (in any direction of any object) to a threshold “set as a function of a velocity decrease and a deceleration.”

Accordingly, claim 11 is allowable, as are its dependent claims 13, 15, and 20.

B. THE OBVIOUSNESS REJECTION OF CLAIM 12

Claim 12 was rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,236,922 (“Andres”) in view of U.S. Patent No. 5,014,810 (“Mattes”), in further view of U.S. Patent No. 6,459,366 (“Foo”), and in further view of U.S. Patent Application No. 2003/0197356 (“Fisher”).

CLAIM 12

Claim 12 depends from claim 11, and it is therefore allowable for essentially the same reasons, since the “Foo” and “Fisher” references do not cure – and are not asserted to cure -- the deficiencies of the “Andres” reference, as explained above as to claim 11.

Furthermore, claim 12 is also allowable for the following reasons. Even if the Foo reference did refer to comparing a crash velocity to a velocity threshold that is set as a function of the crash displacement, it does not disclose or suggest the feature of comparing a forward displacement to a forward displacement threshold value which is set as a function of the velocity decrease, as provided for in the context of the presently claimed subject matter of claim 12.

In particular, the cited section of Foo is clear that the actuation is controlled *in response to the determined crash velocity value relative to the value of the threshold, in which the threshold value is provided having a value functionally related to determined crash displacement.* (*See* Foo at col. 2, lines 10 to 19).

Therefore, claim 12 is also allowable for this further reason.

C. THE OBVIOUSNESS REJECTION OF CLAIM 14

Claim 14 was rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,236,922 (“Andres”) in view of U.S. Patent No. 5,014,810 (“Mattes”), and in further view of U.S. Patent No. 6,549,836 (“Yeh”).

CLAIM 14

Claim 14 depends from claim 11, and it is therefore allowable for essentially the same reasons, since the “Yeh” reference does not cure – and is not asserted to cure -- the deficiencies of the “Andres” reference, as explained above as to claim 11.

D. THE OBVIOUSNESS REJECTIONS OF CLAIMS 16 TO 19

Claims 16 to 19 were also rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,236,922 (“Andres”) in view of U.S. Patent No. 5,014,810 (“Mattes”), in further view of U.S. Patent No. 6,459,366 (“Foo”), and in further view of U.S. Patent Application No. 2003/0197356 (“Fisher”).

CLAIMS 16 TO 19

Claims 16 to 19 depend from claim 11, and they are therefore allowable for essentially the same reasons, since the “Foo” and “Fisher” references do not cure – and are not asserted to cure -- the deficiencies of the “Andres” reference, as explained above as to claim 11.

E. THE OBVIOUSNESS REJECTIONS OF CLAIMS 21 TO 30

CLAIMS 21 TO 30

According to page 6 of the Final Office Action, claims 21 to 30 were “rejected for using the same prior arts and same rationales as claims 12- 20” -- without any other specific reasoning. It is believed that these rejections are improper and cannot even be properly framed for appeal, since the Examiner has provided nothing more than omnibus rejections of claims 21 to 30.

It is respectfully submitted that claims 21 to 30 depend from claim 11, and they are therefore allowable for the same reasons as claim 11, as explained above as to claim 11.

Furthermore, claim 21 is also allowable for the following further reasons. Even if the Foo reference did refer to comparing a crash velocity to a velocity threshold that is set as a function of the crash displacement, it does not disclose the feature of comparing a forward displacement to a forward displacement threshold value which is set as a function of the velocity decrease, as provided for in the context of the presently claimed subject matter of claim 21.

In particular, the cited section of Foo is plain that the actuation is controlled *in response to the determined crash velocity value relative to the value of the threshold, in which the threshold value is provided having a value functionally related to determined crash displacement.* (*See* Foo at col. 2, lines 10 to 19).

Therefore claim 21 is also allowable for this further reason, as are its dependent claims.

Accordingly, claims 11 to 30 are allowable.

As further regards all of the obviousness rejections, any Official Notice was previously traversed to the extent that it was maintained and it was requested that the Examiner provide specific evidence to establish those assertions and/or contentions that may be supported by the Official Notices under 37 C.F.R. § 1.104(d)(2) or otherwise. The § 103 rejections are apparently based on assertions that draw on facts within the personal knowledge of the Examiner, since no support was provided for these otherwise conclusory and unsupported assertions. The Examiner, however, never provided an affidavit and/or published information concerning these assertions. (*See also* MPEP § 2144.03).

As further regards each of the obviousness rejections, it is respectfully submitted that the cases of *In re Fine*, *supra*, and *In re Jones*, 21 U.S.P.Q.2d 1941 (Fed. Cir. 1992), make plain that the Office's generalized assertions that it would have been obvious to modify or combine the references do not properly support a § 103 rejection. It is respectfully submitted that those cases make plain that the Answer reflects a subjective “obvious to try” standard, and therefore does not reflect the proper evidence to support an obviousness rejection based on the references relied upon. In particular, the Court in the case of *In re Fine* stated that:

The PTO has the burden under section 103 to establish a *prima facie* case of obviousness. It can satisfy this burden only by showing some objective teaching in the prior art or that knowledge

generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references. This it has not done. . . .

Instead, the Examiner relies on hindsight in reaching his obviousness determination. . . . One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.

In re Fine, 5 U.S.P.Q.2d at 1598 to 1600 (citations omitted; italics in original; emphasis added). Likewise, the Court in the case of In re Jones stated that:

Before the PTO may combine the disclosures of two or more prior art references in order to establish *prima facie* obviousness, there must be some suggestion for doing so, found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. . . .

Conspicuously missing from this record is any evidence, other than the PTO's speculation (if it be called evidence) that one of ordinary skill . . . would have been motivated to make the modifications . . . necessary to arrive at the claimed [invention].

In re Jones, 21 U.S.P.Q.2d at 1943, 1944 (citations omitted; italics in original).

That is exactly the case here since it is believed and respectfully submitted that the Office Actions to date offer no evidence whatsoever, but only conclusory hindsight, reconstruction and speculation, which these cases have indicated does not constitute evidence that will support a proper obviousness finding. Unsupported assertions are not evidence as to why a person having ordinary skill in the art would be motivated to modify or combine references to provide the claimed subject matter of the claims to address the problems met thereby. Accordingly, the Office must provide proper evidence of a motivation for modifying or combining the references to provide the claimed subject matter.

Also, the Federal Circuit in the case of In re Kotzab has made plain that even if a claim concerns a “technologically simple concept” — which is not the case here — there still must be some finding as to the “specific understanding or principle within the knowledge of a skilled artisan” that would motivate a person having no knowledge of the claimed subject matter to “make the combination in the manner claimed,” stating that:

In this case, the Examiner and the Board fell into the hindsight trap. The idea of a single sensor controlling multiple valves, as opposed to multiple sensors controlling multiple valves, is a technologically simple concept. With this simple concept in mind, the Patent and Trademark Office found prior art statements that in the abstract appeared to suggest the claimed limitation. But, there

was no finding as to the specific understanding or principle within the knowledge of a skilled artisan that would have motivated one with no knowledge of Kotzab's invention to make the combination in the manner claimed. In light of our holding of the absence of a motivation to combine the teachings in Evans, we conclude that the Board did not make out a proper *prima facie* case of obviousness in rejecting [the] claims . . . under 35 U.S.C. Section 103(a) over Evans.

In re Kotzab, 55 U.S.P.Q.2d 1313, 1318 (Fed. Cir. 2000) (emphasis added). Here again, there have been no such findings to establish that the features discussed above of the rejected claims are met by the reference relied upon. As referred to above, any review of the reference, whether taken alone or combined, makes plain that the reference simply does not describe the features discussed above of the rejected claims.

Thus, the proper evidence of obviousness must show why there is a suggestion as to the reference so as to provide the subject matter of the claimed subject matter and its benefits.

In short, there is no evidence that the reference relied upon, whether taken alone or otherwise, would provide the features of the claims discussed above. It is therefore respectfully submitted that the claims are allowable for these reasons.

As still further regards all of the obviousness rejections of the claims, it is respectfully submitted that a proper *prima facie* case has not been made in the present case for obviousness, since the Office Actions to date never made any findings, such as, for example, regarding in any way whatsoever what a person having ordinary skill in the art would have been at the time the claimed subject matter of the present application was made. (*See In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998) (the “factual predicates underlying” a *prima facie* “obviousness determination include the scope and content of the prior art, the differences between the prior art and the claimed invention, and the level of ordinary skill in the art”)). It is respectfully submitted that the proper test for showing obviousness is what the “combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art”, and that the Patent Office must provide particular findings in this regard — the evidence for which does not include “broad conclusory statements standing alone”. (*See In re Kotzab*, 55 U.S.P.Q. 2d 1313, 1317 (Fed. Cir. 2000) (citing *In re Dembiczak*, 50 U.S.P.Q.2d 1614, 1618 (Fed. Cir. 1999) (obviousness rejections reversed where no findings were made “concerning the identification of the relevant art”, the “level of ordinary skill in the art” or “the nature of

the problem to be solved”))). It is respectfully submitted that there has been no such showings by the Office Actions to date or by the Advisory Action.

In fact, the present lack of any of the required factual findings forces both Appellants and any Appeals Board to resort to unwarranted speculation to ascertain exactly what facts underly the present obviousness rejections. The law mandates that the allocation of the proof burdens requires that the Patent Office provide the factual basis for rejecting a patent application under 35 U.S.C. § 103. (See *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984) (citing *In re Warner*, 379 F.2d 1011, 1016, 154 U.S.P.Q. 173, 177 (C.C.P.A. 1967))). In short, the Examiner bears the initial burden of presenting a proper prima facie unpatentability case — which has not been met in the present case. (See *In re Oetiker*, 977 F.2d 1443, 1445, 24, U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992)).

CONCLUSION

In view of the above, it is respectfully requested that the rejections of the finally rejected claims 11 to 30 be reversed, and that these claims be allowed as presented.

Respectfully submitted,

Dated: November 24, 2009

By: /Aaron C. Deditch/

Aaron C. Deditch (Reg. No. 33,865) for:
Gerard A. Messina
(Reg. No. 35,952)

KENYON & KENYON LLP
One Broadway
New York, New York 10004
(212) 425-7200

CUSTOMER NO. 26646

CLAIMS APPENDIX

1-10. (Canceled).

11. A method for activating at least one personal protection device as a function of at least one signal derived from at least one acceleration sensor, the method comprising:
 using a forward displacement as the at least one signal;
 comparing the at least one signal to at least one threshold value surface, which is set as a function of a velocity decrease and a deceleration; and
 activating the personal protection device as a function of the comparison.

12. The method according to claim 11, further comprising:
 comparing the forward displacement to a first threshold value which is set as a function of the velocity decrease;
 comparing the forward displacement to a second threshold value which is set as a function of the deceleration; and
 simulating the threshold value surface as a function of the comparisons.

13. The method according to claim 11, further comprising modifying the threshold value surface as a function of at least one of (a) a signal of an applied external sensor system and (b) at least one characteristic value.

14. The method according to claim 11, further comprising modifying the threshold value surface as a function of at least one of a crash type recognition and a crash severity recognition.

15. The method according to claim 11, further comprising setting the threshold value surface as a function of a crash phase.

16. The method according to claim 15, wherein, if a predefined velocity decrease is reached, a first number indicating whether the forward displacement has reached the threshold value surface is awaited.

17. The method according to claim 11, further comprising comparing at least one of the forward displacement and the velocity decrease with a third threshold value.

18. The method according to claim 17, wherein the third threshold value is constant over time.

19. The method according to claim 11, further comprising estimating the forward displacement using an expansion into a series.

20. The method according to claim 11, wherein at least one of the steps is performed by a control unit.

21. The method according to claim 11, further comprising:
 comparing the forward displacement to a first threshold value which is set as a function of the velocity decrease;
 comparing the forward displacement to a second threshold value which is set as a function of the deceleration; and
 simulating the threshold value surface as a function of the comparisons.

22. The method according to claim 21, further comprising:
 modifying the threshold value surface as a function of at least one of (a) a signal of an applied external sensor system and (b) at least one characteristic value.

23. The method according to claim 21, further comprising:
 modifying the threshold value surface as a function of at least one of a crash type recognition and a crash severity recognition.

24. The method according to claim 21, further comprising:
setting the threshold value surface as a function of a crash phase.
25. The method according to claim 21, wherein if a predefined velocity decrease is reached, a first number indicating whether the forward displacement has reached the threshold value surface is awaited.
26. The method according to claim 21, further comprising:
comparing at least one of the forward displacement and the velocity decrease with a third threshold value.
27. The method according to claim 26, wherein the third threshold value is constant over time.
28. The method according to claim 21, further comprising:
estimating the forward displacement using an expansion into a series.
29. The method according to claim 21, further comprising:
setting the threshold value surface as a function of a crash phase; and
comparing at least one of the forward displacement and the velocity decrease with a third threshold value;
wherein if a predefined velocity decrease is reached, a first number indicating whether the forward displacement has reached the threshold value surface is awaited.
30. The method according to claim 29, wherein the third threshold value is constant over time.

U.S. Pat. App. Ser. No. 10/583,055
Attorney Docket No. 10191/4095
Appeal Brief

EVIDENCE APPENDIX

Appellants have not submitted any evidence pursuant to 37 CFR Sections 1.130, 1.131 or 1.132, and do not rely upon evidence entered by the Examiner.

U.S. Pat. App. Ser. No. 10/583,055
Attorney Docket No. 10191/4095
Appeal Brief

RELATED PROCEEDINGS INDEX

There are no interferences or other appeals related to the present application.